

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID BOUCHER,

Plaintiff,

V.

JEVIC TRANSPORTATION, INC.

Defendant.

CASE No. 05-cv-40111-FDS

REQUEST FOR HEARING

DEFENDANT JEVIC'S MOTION TO DISMISS

Defendant Jevic Transportation, Inc. (“Jevic”), pursuant to Fed. R. Civ. P. 12(b)(6), moves to dismiss Plaintiff David Boucher’s Complaint, and states in support as follows:

1. Plaintiff David Boucher (“Boucher”) alleges in his Complaint that he loaded trucks during the entire course of his employment with Jevic, a nationwide trucking company and carrier of freight. He further alleges that he did not receive overtime pay required by Massachusetts law.

2. Boucher's Complaint, originally filed in state court, was timely removed to this Court on July 6, 2005.

3. As set forth in Jevic's Memorandum in Support of this Motion to Dismiss, incorporated herein by this reference, Boucher fails to state a claim. *See Harrington v. Despatch Indus., L.P.*, No. Civ. A. 03-12186-RGS, 2005 WL 1527630, *3 (D. Mass. June 29, 2005); *Swift v. AutoZone, Inc.*, 806 N.E.2d 95, 98 (Mass. 2004); *see also Valerio v. Putnam Assocs. Inc.*, 173 F.3d 35 (1st Cir. 1999).

4. Pursuant to Local Rule 7.1(2), counsel for Jevic has conferred with counsel for Boucher and the parties have attempted in good faith to resolve or narrow the issues.

WHEREFORE, Defendant Jevic Transportation, Inc. requests the Court dismiss Plaintiff David Boucher's Complaint for failure to state a claim.

REQUEST FOR ORAL ARGUMENT

The defendant, Jevic Transportation, Inc., hereby requests oral argument on its Motion to Dismiss.

Respectfully Submitted,

Morrison Mahoney LLP

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ATTORNEYS FOR DEFENDANT JEVIC
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was served via United States mail, first class postage prepaid on this 7th day of July, 2005, addressed to the following counsel of record:

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/s/ Tory A. Weigand
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